

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adip Vora	Team: Squad #01	CCRB Case #: 202100858	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/29/2021 9:45 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 7/29/2022	Precinct: 46		
Date/Time CV Reported Mon, 02/01/2021 9:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/08/2021 10:56 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Accomando	08316	949957	046 PCT
2. POM Eric Bernard	19619	958308	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Vlora Gjeka	10310	965138	046 PCT
2. POM Jonathan Keith	19375	959723	046 PCT
3. POM Bill Bravo	5673	962954	046 PCT
4. SGT Michael Mcdermott	03802	950858	046 PCT
5. POM Michael Saline	27059	967319	046 PCT
6. POM Nicholas Kourounis	28949	954029	046 PCT
7. DT3 Brian Cestare	02479	954626	INT FIO PRG

Officer(s)	Allegation	Investigator Recommendation
A . POM Thomas Accomando	Abuse: Police Officer Thomas Accomando stopped § 87(2)(b)	§ 87(2)(b)
B . POM Thomas Accomando	Abuse: Police Officer Thomas Accomando searched § 87(2)(b)	§ 87(2)(b)
C . POM Eric Bernard	Abuse: Police Officer Eric Bernard frisked § 87(2)(b)	§ 87(2)(b)
D . POM Eric Bernard	Abuse: Police Officer Eric Bernard searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 1, 2021, § 87(2)(b) filed this complaint with IAB via telephone. On February 8, 2021, this complaint was received by the CCRB.

On January 29, 2021, at approximately 9:45 PM, § 87(2)(b) was inside of a bodega located at § 87(2)(b) in the Bronx when Police Officer Thomas Accomando, of the 46th Precinct, stopped him and searched his bag (**Allegations A and B: Abuse of Authority – § 87(2)(g)**). Police Officer Eric Bernard, of the 46th Precinct, frisked and searched § 87(2)(b) (**Allegations C and D: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) was arrested as a result of this incident.

Body-worn camera (BWC) footage was received from Detective Brian Cestare, PO Accomando, PO Bernard, PO Bill Bravo, PO Vlora Gjeka, PO Jonathan Keith, PO Nicholas Kourounis, PO Michael Saline, and Sergeant Michael McDermott (**Board Reviews 01-13**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Thomas Accomando stopped § 87(2)(b)

§ 87(2)(b) testified that he went to the bodega at § 87(2)(b) in the Bronx while wearing a green jacket, gray sweatpants, and gray and white sneakers (**Board Review 14**). § 87(2)(b) frequently went to the bodega, and on this date, he was in the bodega for about one minute and bought a soda and two roll-up cigars. § 87(2)(b) exited the bodega and PO Accomando, PO Bernard, and PO Gjeka approached him. PO Accomando led § 87(2)(b) back into the store. PO Bernard asked § 87(2)(b) where he was going, and § 87(2)(b) said he was just going home.

§ 87(2)(e), § 87(2)(f)

[REDACTED]

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

[REDACTED]

PO Accomando testified that he went to § 87(2)(b) with the 46th Precinct Public

Safety Team based on information he received from Det. Cestare, of the Field Intelligence Office, that § 87(2)(b) was at the location and in possession of a firearm (**Board Review 15**). PO Accomando entered the bodega and ran into § 87(2)(b) who was standing in the middle of the doorway entrance to the bodega. § 87(2)(b) was carrying a large, open-faced bag, and PO Accomando looked down into the bag while § 87(2)(b) was still in possession of it. PO Accomando saw a tremendous amount of individually packaged marijuana in § 87(2)(b)'s bag in vials. PO Accomando looked down into the bag based on instinct due to the size of the bag, and there were no other factors that prompted PO Accomando to look down into the bag. § 87(2)(b) was free to leave up until the moment PO Accomando saw the marijuana in § 87(2)(b)'s bag; however, after that point, PO Accomando considered § 87(2)(b) to be under arrest for § 87(2)(a) 160.50. PO Accomando also believed that § 87(2)(b) was intending to sell the marijuana on the date of the incident because it was individually packaged, which in PO Accomando's experience tends to indicate intent to sell.

PO Bernard testified that he also independently observed a large amount of individually packaged marijuana in the open-faced canvas bag in § 87(2)(b)'s right hand (**Board Review 21**). PO Bernard could also smell unburnt marijuana in § 87(2)(b)'s vicinity.

PO Gjeka testified that she could see and smell a large amount of marijuana in bags in a large, rectangular shopping bag in § 87(2)(b)'s possession (**Board Review 22**).

Property vouchers from § 87(2)(b)'s arrest show that § 87(2)(b) was in possession of 50 plastic cannisters of marijuana, 37 ziplock containers of marijuana, eight plastic containers of powdered crack cocaine, and one plastic shopping bag; however, the vouchers do not list the weight of the marijuana (**Board Review 16**). § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

PO Bravo's BWC footage from 00:53 to 00:58 of the video player's timestamp captures PO Accomando looking down at something in § 87(2)(b)'s left hand while entering the store, then guiding § 87(2)(b) into the store (**Board Review 08**). From 01:04 to 01:07, the footage captures a large, blue bag in § 87(2)(b)'s right hand with a widely opened top. At 01:07, PO Accomando takes possession of the bag.

PO Bernard's BWC footage at 00:55 of the video player's timestamp briefly captures a large, blue, open-faced canvas bag in § 87(2)(b)'s left hand as he opens the bodega door, and PO Accomando looking down into it (**Board Reviews 05, 20**).

Per People v. De Bour, 40 N.Y.2d 210, an officer may forcibly stop an individual when he possesses reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor (**Board Review 17**).

Recreational use of marijuana was legalized on March 31, 2021, prior to this incident. As of the date of this incident, New York State Penal Law 221.10 was still in effect, in which a person is guilty of criminal possession of marijuana in the fifth degree when he knowingly and unlawfully possesses: (1) marijuana in a public place, open to public view; or (2) marijuana and marijuana product with an aggregate weight of more than 25 grams (**Board Review 18**). Furthermore, per New York State Penal Law 221.35, a person is guilty of criminal sale of marijuana in the fifth degree when he knowingly and unlawfully sells marijuana of an aggregate weight of two grams or less (**Board Review 30**).

People v Jackson, 18 N.Y.3d 738 establishes that the “open to public view” element of New York State Penal Law 221.10 only requires that any other member of the public could have also seen the marijuana from the same vantage point (**Board Review 19**).

§ 87(2)(g)

[REDACTED]

Allegation (B) Abuse of Authority: Police Officer Thomas Accomando searched § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Eric Bernard frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Eric Bernard searched § 87(2)(b)

§ 87(2)(b) testified that PO Bernard patted down his midsection and all over his upper and lower body (**Board Review 14**). PO Bernard then put his hands into § 87(2)(b)'s jacket pockets, which contained marijuana that PO Bernard took out of § 87(2)(b)'s pockets.

PO Accomando's BWC footage at 01:06 of the video player's timestamp captures PO Accomando asking § 87(2)(b) what is in the bag (**Board Review 01**). § 87(2)(b) responds that weed is in the bag, for smoking. At 01:10, PO Accomando seems to reach down while saying “let go.” From 01:13 to 01:17, § 87(2)(b) lifts up his arms while PO Bernard frisks his jacket, and PO Accomando lifts a black plastic bag into frame while saying, “lot of weed § 87(2)(b)” From 01:20 to 01:35, PO Bernard opens and reaches into § 87(2)(b)'s jacket pockets. From 02:17 to 02:43, PO Accomando can be seen and heard searching through § 87(2)(b)'s bag.

PO Accomando testified that he considered § 87(2)(b) to be under arrest from the moment he observed the marijuana in § 87(2)(b)'s bag (**Board Review 15**). § 87(2)(b) was arrested for § 87(2)(a) 160.50. PO Accomando did not recall taking § 87(2)(b)'s bag or searching it; however, after being shown his BWC footage, PO Accomando acknowledged that he conducted a search of § 87(2)(b)'s bag. PO Accomando stated that he was searching for marijuana and the firearm that § 87(2)(b) was purported to be in possession of.

PO Bernard testified that he saw a large quantity of individually packaged marijuana in plain view in § 87(2)(b)'s bag and considered him to be under arrest for § 87(2)(a) 160.50 from that point onward (**Board Review 21**). PO Bernard frisked § 87(2)(b)'s entire body incident to a lawful arrest and because he had information from Det. Cestare that § 87(2)(b) was possibly in possession of a firearm. PO Bernard was not told of a specific location on § 87(2)(b)'s person where the firearm was being stored, so PO Bernard frisked § 87(2)(b)'s entire body. PO Bernard stated that, because § 87(2)(b) was under arrest, before § 87(2)(b) would be placed inside of any NYPD vehicle or transported anywhere, for his own safety the safety of other officers, and the safety of § 87(2)(b) himself, § 87(2)(b) would be frisked and searched to check for any knives, needles, guns, or anything that could hurt § 87(2)(b) or others. PO Bernard

searched § 87(2)(b)'s coat and pants pockets to find any weapons or contraband, incident to arrest, and only retrieved § 87(2)(b)'s phone from § 87(2)(b)'s pants pocket.

PO Kourounis's BWC footage from 01:09 to 01:13 captures PO Accomando in possession of a large canvas bag and taking a smaller, black plastic bag out of it (**Board Review 06**).

In People v. Wylie, 244 A.D.2d 247, a search of a bag was considered a lawful search incident to arrest as it occurred immediately at the same location as the arrest right after the defendant was handcuffed and because officers had probable cause to believe that the bag contained further evidence (**Board Review 23**).

An officer may frisk and search an individual incident to a lawful arrest, per People v. De Bour, 40 N.Y.2d 210 (**Board Review 17**).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two other CCRB complaints and has been named as a victim in seven other allegations (**Board Review 25**):

§ 87(2)(b)

- PO Accomando has been a member of service for 10 years and has been a subject in 11 other CCRB complaints and 18 other allegations, none of which were substantiated.

§ 87(2)(g)

- PO Bernard has been a member of service for six years and has been a subject in 10 other CCRB complaints and 44 other allegations, of which one was substantiated:
 - 201602498 involved a substantiated allegation of Premises entered and/or searched against PO Bernard. The Board recommended Formalized Training and the NYPD imposed No Penalty.

Mediation, Civil, and Criminal Histories

- Mediation was not offered for this complaint.
- As of October 18, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (**Board Review 26**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 1

Investigator:	<u>Inv. Adip Vora</u>	<u>Inv. Adip Vora</u>	<u>06/01/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Mgr. Joy Almeyda</u>	<u></u>	<u>6.2.22</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date